IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

WP(C).No. 34652 of 2006(A)

AGAINST THE ORDER IN IA 2739/ 2006 IN
OS.512/2006 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

JAMES, AGED 51 YEARS,
S/O.OUSEPH, KANNAMPUZHA HOUSE,
WEST CHALAKUDY VILLAGE, THRISSUR DIST.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENT:

JOSE, S/O.PAILAPPAN,
THARAKAN HOUSE, WEST CHALAKUDY VILLAGE,
THRISSUR DT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.34652 OF 2006

DATED THIS THE 1st DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the plaintiff in O.S. 512/06 on the file of Sub Court, Irinjalakuda. Suit is filed for specific performance of Ext.P1 agreement for sale. Case of petitioner was that he had earlier filed O.S.494/06 seeking a decree for temporary injunction restraining respondent from alienating the property, as the period fixed for performance of the agreement did not expire at that time and after expiry of the period the present suit has been filed. In the suit, petitioner filed Ext.P4 application under Order XXXIX Rule 1 of Code of Civil Procedure seeking an order of temporary injunction restraining respondent from alienating or causing damage to the property. According to the petitioner even though respondent had undertaken not to alienate the property, trial Court did not record the undertaking and posted the application along with the suit without passing any order. This petition is filed under Article 227 of Constitution of India, for a direction to Sub Court to pass orders in Ext.P4 application.

2. Learned Counsel appearing for petitioner was heard.

3. When the suit was for specific performance of the

agreement for sale and that was filed after petitioner had earlier filed a suit for temporary injunction and obtained an order of temporary injunction restraining respondent from alienating the property and Ext.P4 application was filed in the suit seeking an order of temporary injunction, the trial Court should have passed orders in Ext.P4 application, without delay.

Learned Sub Judge is directed to pass appropriate order in Ext.P4 application after hearing both parties, within thirty days from the date of receipt of a copy of this judgment.

M.SASIDHARAN NAMBIAR,JUDGE

Acd